

OCTOBER 2012

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Winning in the Midwest

BY F. VINCENT VERNUCCIO

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a New Trade Barrier

BY REP. DAVE FRIZZELL

Economy Derailed

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# The Wrong Path Forward: Sequestration

BY CHAIRMAN J. RANDY FORBES (VA)

There are only seven months to go until the devastating cuts to our national security brought on by “sequestration” take effect. After already cutting \$487 billion from the defense budget over the next ten years, sequestration threatens an additional \$500 billion in cuts. The Secretary of Defense, Leon Panetta, has said these arbitrary cuts would be “catastrophic” to our nation’s military. But unless Congress and the President take action, sequestration will take effect on January 2, 2013. Make no mistake, the effects of allowing these additional cuts to occur, would be catastrophic to not only our military, but also local communities and veterans.

What would a world under sequestration look like for our Armed Forces? According to the U.S. Navy, they would have to cut the equivalent of the entire ship-building account from their budget, putting the fleet on a glide path to 240 ships, or just half of the 500-ship fleet our Navy leaders say we need to meet our Combatant Commanders’ demands.

Additionally, the Army and Marine Corps would have to pink slip about 225,000 soldiers, more than the size of the entire Marine Corps. On top of that, 80-100,000 of these end strength reductions could come from the National Guard. This move would cripple states’ ability to respond to a natural disaster or terrorist attack and severely limit the Army’s flexibility to respond to a major contingency overseas.

The Air Force, already at its smallest size in more than six decades, will only shrink further—this at a time when according to a recent study, 77 percent of Americans believe that our Air Force is critical and should not be reduced.

Finally, future military service members and veterans could have their retirement pay significantly restructured, potentially delaying receipt and reducing earned benefits.

But the devastation from these cuts won’t just affect our platforms and people—our defense manufacturing base will be eroded as well. With research, development, and procurement taking the bulk of the cuts, not only will this put many skilled Americans out of work, it will undercut the viability of our national defense manufacturing base.

The effect on our economy will also be devastating. A recent George Mason University analysis shows that over 352,000 jobs will be lost from prime DOD contractors and their suppliers if sequestration were to go into effect. This study further concluded that the total potential job losses as a result would be at an estimated 1,006,315 workers with a total loss of workers’ wages and salaries of nearly \$59.4 billion. Indeed, the nonpartisan Congressional Budget Office concluded in May that the effects would be so bad that our country could be plunged back into a recession next year if sequestration takes effect and scheduled tax increases occur simultaneously.

State economies will not be spared. Under sequestration, my state of Virginia alone will lose 122,800 jobs and \$10.5 billion in Gross State Product. This is more than the annual earnings of over half of the Fortune 500. According to a Center for Security Policy study, other states that will be hard hit by sequestration include California, Maryland, Texas and Florida.

Some have argued that defense should bear its share of the burden to help balance our budget. This statement is repeated often, but the reality is this Administration

has been cutting defense since 2009. In 2009 and 2010 alone, the Administration reduced planned defense spending by more than \$400 billion, cancelling critical programs like the F-22 fighter, CG(X) cruiser, and the Army’s Future Combat System. Then last year the Budget Control Act cut an additional \$487 billion and set up the sequestration process that will require an additional half-trillion dollars in cuts. In fact, while defense spending makes up roughly 20 percent of the federal budget, it has accounted for 50 percent of deficit reduction initiatives over the last year. We’re no longer just trimming the fat from the defense budget, we’re cutting into the bone and dismantling the capabilities that enable our national security strategy.

Given the stakes, my colleagues and I have launched a nationwide series of listening sessions entitled Defending our Defenders to bring this message to the American public. As well, we aim to allow participants to share stories and voice their opinions about these momentous changes to our national security.

There is no debate—all agree that the effects sequestration would have on our military, national security and economy are far reaching and devastating. It is now time to work together for a solution to ensure our military remains strong and our nation secure.



**REPRESENTATIVE J. RANDY FORBES** of Virginia is Chairman of the U.S. House Armed Services Readiness Subcommittee and an ALEC Congressional Alumnus.



# Liberating Our Lands: It's Been Done Before!

BY REPRESENTATIVE KEN IVORY (UT)

**T**he western states had simply had enough. They banded together and sent petition after petition, resolution after resolution, and delegation after delegation to Congress. They complained:

- The federal government was not disposing of the public lands as promised;
- The states could not tax the federal lands to adequately fund education; and
- They could not grow their economies and generate well-paying jobs; because
- The federal government was hoarding their abundant minerals and natural resources.

Sound familiar? This was in 1828!

The disgruntled “western states” in 1828 included Illinois, Indiana, Missouri, Arkansas, Louisiana, Alabama, and Florida. They knew their public lands history; knew their rights; banded together; and because they refused to take “NO” for an answer, these 1828 “western states” secured their rights and benefits to the timely transfer of their public lands as promised at statehood. Presently, the 1828 “western states” have 3-4 percent federally controlled lands. More than 50 percent of the lands in today’s western states, however, are still controlled by the federal government more than 100 years since statehood.

From the congressional resolutions of 1780, to the Land Ordinance of 1784, through the Northwest Ordinance of 1787 forward, the federal government was entrusted by the states with bare legal title to the public lands, in the manner of a trustee, to dispose of these lands to create new states and to use the proceeds to pay the national debt. Accordingly, the federal government promised all new states at statehood that it would “extinguish title” to the public lands in a timely fashion from admission into the Union.

However, in 1976, under the Federal Land Policy Management Act (FLPMA), Congress unilaterally abrogated its centuries-old duty to timely dispose of the public lands declaring “that it is the policy of the United States that the public lands be retained in Federal ownership.” Sec. 102. [43 U.S.C. 1701] (a).

Significantly, in 2009, the U.S. Supreme Court unanimously declared “the consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event ... to suggest that subsequent [acts of Congress] somehow can diminish what



has already been bestowed. And that proposition applies a fortiori [with even greater] where virtually all of a State’s public lands ... are at stake” (*Hawaii v. OHA*)

With more than 50 percent untaxable, federally controlled lands, today’s western states struggle—as did their 1828 counterparts—to adequately fund education, to grow their economies, to generate well-paying jobs to maintain population levels, and to responsibly access the many trillions of dollars worth of abundant resources locked up in their states by federal control.

Faced with an education-funding gap of more than \$2 billion, and more than 30 percent of the state budget precariously dependent on unsustainable, federal deficit spending, Utah enacted the Transfer of Public Lands Act (HB 148, 2012). The bill sets a firm deadline of December 31, 2014, for the federal government to finally honor to Utah the same promise it made and kept with all states east of Colorado to transfer title to the public lands. It protects Utah’s national parks and other heritage sites and provides for the creation of the Utah Public Lands Commission to manage Utah’s public lands by Utahns, for Utahns, and for our guests from around the world.

Legislators, leaders, and organizations from other western states are preparing similar legislation for 2013. If you refuse to allow the education funding and economic self-reliance of your state to remain precariously at risk while trillions of dollars in your abundant natural resources remain arbitrarily locked up, we invite you to (1) study your public lands history, (2) know your rights, (3) stand with us in Utah and (4) refuse to take “NO” for an answer in compelling the federal government to honor the same promise it kept with all states east of Colorado.



**KEN IVORY** represents Utah House - District 47 and serves as Chairman of ALEC’s International Relations Task Force’s Federalism Subcommittee. He is also the President of the American Lands Council and can be reached at [Ken@AmericanLandsCouncil.org](mailto:Ken@AmericanLandsCouncil.org). Learn more about this lands initiative at [www.AmericanLandsCouncil.org](http://www.AmericanLandsCouncil.org) and [www.AreWeNotAState.com](http://www.AreWeNotAState.com).

# Bridging the Gap

## *Public-Private Partnerships as a Proven Solution to Infrastructure Problems*

BY GEOFF SEGAL

According to the American Society of Civil Engineers, the U.S. economy could lose more than 876,000 jobs and suppress GDP growth by nearly \$900 billion by the year 2020 if we don't address the condition of our crumbling infrastructure.<sup>1</sup> No one disputes that more investment is needed. However, with continued pressure on state and local budgets and the decreasing likelihood of significant federal transportation funds, the question is where the funds will come from.

While not the entire solution, public-private partnerships (P3s) are mutually beneficial contracts between government and private sector entities to deliver public services and are playing an increasingly important role in delivering complex infrastructure projects and injecting new money into our infrastructure. This trend will continue as fiscal pressures continue to mount and governments seek innovative solutions to address their needs.

It is estimated that states which have implemented P3s have leveraged tax dollars by a factor of eight to build necessary infrastructure. But it's not just access to capital; P3s benefit governments in other ways including performance and time guarantees, transfer of risk away from the government, accelerated delivery schedules, significant cost savings and the opportunity to innovate.

A quick review of recent P3s provides a glimpse of how state and local governments use P3s to address their infrastructure challenges. In addition to capital, the discipline of the private sector helped create innovative solutions and made these projects a reality.

Virginia was one of the first states to recognize the potential of P3s. Virginia's 1995 Public-Private Transportation Act (PPTA) helped the state take on complex transportation issues. Since then, Virginia has entered into more than 10 P3s and closed a massive project earlier this year.

Over the years the original PPTA law has been amended to take advantage of lessons learned and new best practices. The current administration has taken things a step further and has embarked on an aggressive, but thoughtful, effort to reform the P3 process. One of the outgrowths is the creation of a centralized P3 office across all transportation assets in the state. Modeled after similar efforts in Puerto Rico, British Columbia, the UK and Australia, this office will be better equipped to manage P3s and apply a strategic effort across all transportation assets. Indeed, Virginia recently released a pipeline of multimodal project opportunities throughout the state. The only limiting factor is that Virginia continues

to focus P3s only in the transportation space, whereas the other jurisdictions with centralized efforts look to utilize P3s beyond transportation.

One recent example demonstrates the effectiveness of P3s in the state. The Midtown Tunnel—a two lane tunnel connecting the cities of Portsmouth and Norfolk—is the most heavily traveled two lane tunnel east of the Mississippi and has some of the worst congestion in Virginia. The inconvenience may seem like a trivial public policy problem, but given that Americans spend 4.2 billion hours a year stuck in traffic at a cost of \$78.2 billion, the implications are profound.<sup>2</sup>

The Downtown Tunnel/Midtown Tunnel/MLK Extension project will attempt to tackle this problem through the construction of a new two-lane tunnel adjacent to the existing Midtown Tunnel, safety modifications and upgrades to the existing Midtown and Downtown tunnels, interchange modifications, and the extension of a stretch of freeway.

The Midtown Tunnel Project brings together the Virginia Department of Transportation, Federal Highway Administration, localities and multiple private sector partners. These entities bring unique strengths and areas of specialization that contribute to successfully tackling the intricacies of the \$2.1 billion project.

Other states and local governments have also turned to public-private partnerships to tackle their most complex infrastructure projects. Known for its unending traffic, Los Angeles County officials have recognized the ability of P3s to accelerate delivery of much-needed transit and highway projects, and have started to investigate opportunities to involve the concept of P3s in their Long Range Transportation Plan. In 2011, Texas implemented wide-ranging policies to authorize private sector financing for state and local assets; and Ohio is currently reviewing ways to better utilize P3s in multiple projects around the state. Recently in Chicago, Mayor Rahm Emanuel proposed a \$7.2 billion infrastructure program that will rely heavily on public-private partnerships and private financing for a broad spectrum of projects.

As federal highway funds look decreasingly likely, states need innovative tools to help them address their increasing infrastructure needs. ALEC's *Establishing a Public-Private Partnership (P3) Authority Act* serves as a great example for states that want to leverage private dollars, introduce competition into the market and confront their crumbling infrastructure.



**GEOFF SEGAL** is a Senior Vice President at Macquarie Capital USA and the private sector chair of ALEC's Transportation and Infrastructure Subcommittee.

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# Fixing America's Water Infrastructure Requires Competition and Innovation

BY BONNER R. COHEN

Over the next 20 years, upgrading municipal water and wastewater systems is expected to cost between \$3 and \$5 trillion, placing a heavy burden on taxpayers. However, local governments could cut these costs substantially by updating neglected and tainted procurement practices that handicap competition and raise costs. In fact, local governments could start to save millions simply by allowing all pipe suppliers to compete for contracts, including PVC pipe, which many municipalities currently do not allow.

According to the Water Innovations Alliance, a coalition of cost-conscious water providers and experts, it will take 15 to 20 years of significant investments to stabilize and modernize the U.S. water infrastructure at a cost of \$365 billion, in today's dollars. With little prospect that the funds required to address the problem will be forthcoming in the near future, responsible public officials need creative solutions if they want to satisfy the public's demand for safe and affordable water.

One critical challenge lies in the type of pipes used for water infrastructure. Gregory M. Baird, former chief financial officer for

Aurora Water, Colorado's third largest water utility, and president of the Water Finance Research Foundation, places the blame for the vast majority of water main breaks squarely at the feet of corrosion of metallic pipe, which he calls "epidemic." According to a congressional study, corrosion in the water and wastewater sector is a "\$50.7 billion annual drain on our economy," Baird points out. "Leaking pipes also lose an estimated 2.6 trillion gallons of drinking water every year, or 17 percent of all water pumped in the United States."

Baird calls for the removal of artificial barriers when repairing and replacing our nation's water infrastructure when taxpayer money and federally subsidized tax-exempt debt is being used. Currently, in capital budgets across the nation, hundreds of millions of dollars are being earmarked for water distribution pipe-replacement programs which exclude lower-cost, certified pipe materials that are non-corrosive and environmentally safe.

An urgent need to address these issues is outlined in a 2010 U.S. Geological Survey (USGS) study conducted in Milwaukee, Wisconsin. The USGS researchers investigated the source, transport, and occurrence of intestinal viruses in municipal well water. They found that all their water samples tested positive both for viruses and for the presence of wastewater.



USGS concluded that leaky sewage pipes were one source of entry for the viruses and that the problem could be traced to aging sewer systems dating to the early 1900s that were not being properly maintained.

One of the easiest strategies for cash-strapped local governments to begin tackling this problem is to open up the bidding process to ensure that all technologies and materials are given the consideration they deserve. Inserting some market discipline into the process would go a long way toward achieving that goal. After all, competitive bidding employs the principle of “may the best technology win”—a policy that will immeasurably improve the quality of America’s underground water infrastructure in a cost-effective fashion.

Yet many cities—such as Chicago, New York, Boston, Baltimore, Atlanta, Philadelphia, and Los Angeles—have anti-competitive procurement rules that effectively exclude non-corrosive, more affordable pipes made from polyvinyl chloride (PVC) from competing with more traditional, but corrosion-prone, metallic pipes. Such rules often reflect long-standing, cozy relationships between public officials and suppliers to the detriment of local residents.

In contrast, communities that currently allow such competition have already benefited. Charlotte, Cleveland, Dallas, Fargo, Denver, and San Diego are among the municipalities that allow the competitive bidding process to decide the future of their water networks.

Their experience echoes those of other cities that took the plunge into open competition some time ago. In Great Falls, Montana for example, City Engineer Dave Dobbs reports his city’s water main failure rate of 122 in 1997 was reduced to 35 in 2009 by “replacing old water lines with PVC pipe.”

Similarly, the Canadian cities of Calgary and Edmonton, which permit open bidding, have each saved about \$5 million annually in water maintenance costs because of their extensive use of PVC pipe.

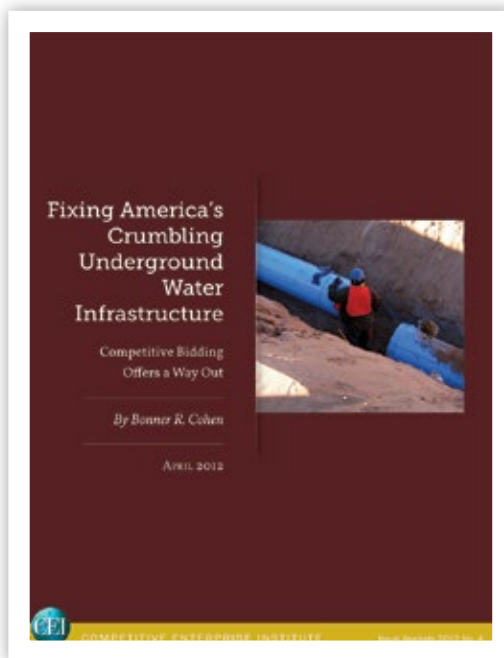
Competitive bidding can serve as an essential safeguard against the influence of politically preferred providers of government services where there may exist a limited amount of choices. When government restricts options it stifles innovation and advancement and sends out an open invitation to crony capitalism, which undermines taxpayers by keeping costs high. We have seen this in our own municipal bond market where bid-rigging increased interest rates, costing taxpayers millions. By reforming the procurement process, we can deal a lethal blow to bid-rigging and all the harm it does.

One of the most insidious forms of crony capitalism is the periodic call for “Buy America” mandates in federal legislation. Senate

appropriators are considering adding Buy America requirements to EPA’s drinking water and clean water state revolving funds (SRF) program in the agency’s FY 2013 budget. The inclusion of such a mandate for certain kinds of pipes and pipe fittings in the 2009 American Recovery and Reinvestment Act (ARRA) stimulus legislation is a case in point. It created a monopoly that benefitted certain iron fittings manufacturers, the only domestic supplier of such equipment. Buy America requirements limit choices, raise costs, and significantly complicate compliance with the SRF program on the part of state and local governments.

Model legislation presented at this year’s ALEC conference in Salt Lake City offered state and local governments a blueprint to address the pressing needs of their water and wastewater systems. The legislation would “ensure that open procurement procedures are utilized in the selection of piping materials for water and wastewater infrastructure projects undertaken by state or local agencies where state funding is used.” It would stipulate that a “piping material is considered proven and acceptable if it meets current and recognized standards as issued by the American Society of Testing and Material (ASTM) and the American Water Works Association (AWWA) and other recognized standards and certification agencies.” The goal is “to construct a project at the best price and best value for system customers and taxpayers.” In this way, public trust in the procurement process can be restored, and the task of rebuilding our water infrastructure to last into the next century can begin.

Human ingenuity has repeatedly come to the rescue of people confronted by problems long thought to be insurmountable. By doing something as simple and sensible as opening up municipal procurement procedures to fair competition, the products of our most creative minds can be put to the service of ensuring Americans access to clean, reliable, and affordable water in their homes, schools, and businesses for generations to come.



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## Professional Licensing: What Is It Good For?

BY BYRON SCHLOMACH, PH.D.

**D**uring legislative sessions in virtually every state, just as there is someone looking to pass a new traffic law or someone else pushing for more spending on health care, someone is pushing a licensing law. It's always for our own good. Without licensing, it's claimed, charlatans will take advantage of us, providing dangerous, shoddy service. Public safety makes professional licensing necessary. Barbers might spread lice. A dirty manicurist's tool can cause infection. Heaven forbid the mayhem an unlicensed massage therapist could inflict. I still haven't quite figured out the precise dangers involved with hiring an unlicensed interior decorator or the danger involved in having fish eat dead skin from one's feet, or the dangers of African hair braiding, though.<sup>1</sup>

Professional licensing often has little to do with public safety. Evidence for the economic argument that unlicensed professional markets can break down if charlatans are too prevalent is slim to none.<sup>2</sup> Unlicensed professionals figure out how to signal quality,

often just by word-of-mouth; they have too much to lose if they don't. The supposed dangers to public safety do not stand up to scrutiny. Besides, if licensing laws are for the purpose of public safety, why do so many include grandfather clauses that allow current practitioners to continue in the profession? Wouldn't they be the dangerous charlatans from whom the law is supposed to protect us?

The real reason for licensing laws can be found in their advocates—members of the profession for which licensing is proposed. Their motive is an economic one. They seek to limit the number of licensed professionals in order to reduce competition and increase the prices they can charge in the market. Economists have found that licensing is quite successful in this regard. When the dental industry pushed policies to decrease their numbers, dentists' earnings rose from being on par with those of physicians in 1990 to being higher than those of physicians by 2000. But don't feel sorry for physicians. Economist Morris Kleiner estimates that physicians earn 40 percent more than individuals with similar training and skills in the biological sciences. In general, licensed professions enjoy a 10 percent earnings premium.<sup>3</sup>

Licensing presents real costs to society in a variety of ways. Kleiner estimates that it results in economic losses as high as \$42 billion per year in 2000 dollars because artificially high prices discourage economic activity.<sup>4</sup> This doesn't count the losses of people like Cindy Vong in Arizona, who invested in a foot exfoliating business using Rufa fish only to have the Board of Cosmetology shut her down for lack of sterilization of the fish.<sup>5</sup>

The real cost of licensing consists of more than dollars and cents. Because of licensing, Remote Area Medical, a private charitable health service organization, cannot administer medical aid to low-income individuals in the vast majority of states.<sup>6</sup> Licensing makes it difficult for professionals to relocate across states as needs (and prices in a market) arise. If today's licensing laws had existed at the time, Abraham Lincoln could not have become a lawyer. Professional licensing makes it difficult for those with low incomes to move up the economic ladder. According to a study by the Canadian government, 80 to 90 percent of work performed by general dentists could be performed by high school graduates with less than two years of post-secondary school training.<sup>7</sup> A recent Institute for Justice study highlights how licensing of low-income occupations blocks economic opportunity. The state of Arizona is the worst offender and currently has the 11th lowest personal income in the nation.<sup>8</sup>

There are prudent measures that can be implemented to first curb the spread of licensing and then gradually roll it back.

Certain criteria should at least be investigated before any new licensing proposal is passed into law. These include examples of actual incidents of endangered public safety with evidence that licensing would have prevented them, a true economic cost/benefit analysis, and impacts on economic opportunity. ALEC's Commerce, Insurance and Economic Development Task Force recently passed model policy that requires what can be called a sunrise process for any proposed licensing law. The same analysis should be conducted as part of a sunset review for existing licensing agencies as well. ALEC's model policy could even be taken a step further. Rather than being required by statute, the sunrise process for proposed licensing laws could be made a constitutional amendment.

Ultimately the goal should be to rely on market forces to discipline professional quality. This can be accomplished with certification instead of licensing. Professional regulation, in order of least to most burdensome, consists of the following: registration,

which only requires reporting one's existence; certification, which requires posting of one's training; and licensing, which prohibits the unlicensed from practicing the profession. Certification is enough to allow consumers to inform themselves on qualitative issues, but it does not block anyone from practicing a given profession. Underwriters' Laboratories, the Good Housekeeping Seal, and Angie's List are all potential models for how certification can work. These are all examples of private certification, though.

Certification through government always risks having a relatively mild form of regulation turn into the harshness of licensing. But privately certified professionals have trouble protecting their training from charlatans who might falsely claim a certification. In general, the only way to enforce a private certification is with a lawsuit. Private certification should be encouraged by making false certification claims punishable under fraud statutes, reducing the expense and trouble to private certifiers of enforcing their credential.

As pointed out by the authors of a relatively new book, *Why Nations Fail*, the creation of economic opportunity with institutions inclusive enough to allow all boats to rise was a long time in coming for mankind.<sup>9</sup> Professional licensing is an example of what the authors call an exclusive institution, favoring artificially created elites over the general populace. Nevertheless, licensing is a retrograde economic move that can be improved upon and, in some ways, can ultimately lead to a more inclusive economic and moral outcome if we are willing to learn its lessons and evolve our institutions accordingly.



**DR. BYRON SCHLOMACH** is an economist and works as Director of the Center for Economic Prosperity at the Goldwater Institute. He is a member of ALEC's Commerce, Insurance and Economic Development Task Force.

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# Taxpayers and Workers Winning in the Midwest

BY F. VINCENT VERNUCCIO

**T**here must be something in the water in the Midwest these days. Wisconsin, Indiana, and even Michigan are enacting laws curbing Big Labor's privileges, as elected officials are finally putting taxpayers and workers ahead of special interests.

In June, voters in Wisconsin overwhelmingly showed their support for reform when they rejected the union-engineered recall of Gov. Scott Walker by a 53 to 46 percent margin. The successes of Gov. Walker's 2011 *Budget Repair Bill*, or Act 10, speak for themselves. Estimated savings to the state and local governments have exceeded \$1 billion in less than a year, and Wisconsin has created 23,000 jobs since 2011.<sup>1,2</sup>

Examples include the Kaukauna school district, which went from a \$400,000 deficit to a \$1.5 million surplus.<sup>3</sup> This has

enabled the district to reduce class sizes and reward high-performing teachers with merit pay. The Appleton school district saved \$3.1 million after putting its union-run employee health plan out for competitive bidding.<sup>4</sup>

Workers also voted with their feet, when given the opportunity. The state's second largest union, the American Federation of State County and Municipal Employees (AFSCME), lost half of its members after workers were given the right to leave the union. This is not a reflection on collective bargaining, per se, but on a union that grew arrogant on its forced dues monopoly.

Earlier this year, Wisconsin's neighbor, Indiana, enacted right to work legislation, making it the 23rd state in the nation to give workers the right to say "no" to a union and still keep their jobs. Right to work in Indiana means that 333,000 Hoosier workers (12.4 percent of the Indiana workforce) can now choose for themselves whether they want to pay union dues or spend their own money elsewhere.



Right to work also means more jobs for Indiana. Companies like Caterpillar have indicated that they are looking to expand in the state because of its skilled workforce and business-friendly environment. This is in no small part due to right to work.

Another Midwest state, Michigan, is taking steps to strengthen their paycheck protection law, which means that some union members will no longer need to go through a burdensome and confusing opt-out process to avoid paying for union political advocacy with which they disagree.

In Indiana, unions are heading to court. On April 9, 2012, attorneys for the International Union of Operating Engineers Local 150 (IUOE) argued that Indiana's right to work law infringes on its free speech rights because it deprives the union of the dues workers are mandated to pay by "agency shop" provisions.

If individual employees like what the union is doing, they are still free to pay dues, but these contributions are purely voluntary. That is a problem for IUOE because if workers are no longer required to pay, the union could lose the funds it needs to

*"The Midwest is seeing an economic resurgence. The recovery is due in large part because these states are stopping favors to special interests and looking to promote low taxes and job creation with their labor reforms."*

Pension reform and the ability to void unsustainable contracts have helped the Wolverine state step back from the economic precipice it stood on only a few short years ago.

Big labor sees the reforms in Indiana, Wisconsin, and Michigan as threatening to their very existence. They have resorted to desperate arguments, lawsuits, and ballot measures to defend their privileges.

Supporters of the so-called "Protect our Jobs" Constitutional Amendment (POJA) in Michigan submitted 684,286 petition signatures to the Michigan Department of State to put the measure on the ballot in November. If passed, the POJA would enshrine collective bargaining in the Michigan Constitution.

The amendment would effectively destroy any chance for right to work policies in Michigan. However, while POJA is already being billed as an anti-right to work measure, the major change it would enact would be to reverse reforms to government union privileges.

Amendment supporters say it would help the middle class. In reality, it will only help the roughly 3 percent of the Michigan population who are government union members, and be paid for by everyone else.

The Amendment would make unions a super-legislature, giving them more power than the people's elected representatives. POJA would remove the governor's and the legislatures'—and thus the voters'—ability to curb unions' power. The Amendment would mean Michigan could not continue, and would never achieve, the type of reforms which have turned states like Wisconsin around.

curry favor with politicians through campaign contributions and to advocate for pro-union policies.

Later in April, IUOE filed another brief in Federal Court, this time claiming that the right to work law violates the 13th Amendment to the Constitution, which outlaws slavery and indentured servitude, because unions have to represent all workers at a workplace. The union's brief does not mention that the reason it has to represent all workers at a given workplace is because of the exclusive representation agreements it negotiates with employers. If the union did not want to negotiate for employees who were not paying members, it could allow those workers to opt out and represent themselves.

The Midwest is seeing an economic resurgence. The recovery is due in large part because these states are stopping favors to special interests and looking to promote low taxes and job creation with their labor reforms. Big labor will try almost anything to block these reforms, but with brave elected officials and an informed electorate the region will continue on the road back to prosperity.



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# When Does Mitigation Make Sense?

BY ELI LEHRER

**T**here is little doubt that free, sensibly regulated insurance markets provide the best incentives to encourage people to prepare their properties against nature's worst. Given limitless resources to reshape America's built environment from scratch, simply allowing insurers to charge risk-based rates would give just about everyone a safe place to live. But America's built environment has evolved over a long period of time. People live in places that may not be the safest, construction standards vary over time, and sometimes threats that nobody knew about become important. The result is that some existing property occasionally needs mitigation: homes need to be retrofitted, breakwaters need to be built, and wetlands need to be preserved in their natural state. These efforts—mitigation—are of interest to insurers, environmentalists and local public policy makers.

The American Legislative Exchange Council (ALEC) has supported mitigation. ALEC model legislation provides advice on mitigation and ALEC publications provide the outlines of a conservative case for mitigation.

Recently, as an ALEC policy advisor, some legislators and others have asked me how they should decide where limited public resources for mitigation should be allocated. The quick answer is: It depends on the circumstances. But that doesn't mean principles can't be considered. Thus, when considering if the government has any business doing mitigation in a particular area, it makes sense for policymakers to raise at least these five questions:

**Has a government subsidy or price control previously distorted the market in the specific area being considered for mitigation supports?**

**1**

One major purpose of mitigation supports should be to undo the damage of past flawed public policy. For example, if a local government decides to subsidize developers to build homes in a certain flood prone area and then gets state insurance regulators to force insurers to sell insurance to the developers at rates that don't

impact risk, then the government has some obligation to undo the damage it has done. While it's important to raise insurance rates to risk-adjusted ones, efforts to support the construction of levees, home retrofits, and wetlands restoration also deserve consideration at the same time this is done.

2

**Would long-term incumbent homeowners of modest means have to move if no public support is provided for mitigation, but be able to stay put if mitigation support is put in place?**

Existing government programs, regulations and subsidies create reliance interests. Not all reliance interests are legitimate, but at least some are. In particular, changes in government policies shouldn't force people to give up homes they've long lived in. While raising insurance rates in hazard-prone areas to risk-adjusted ones may sometimes cause hardships, it isn't unfair to ask owners of million dollar beachfront homes to pony up much more for insurance. On the other hand, if changes to insurance rates threaten to force lower-income individuals from their homes, it's reasonable to see if mitigation efforts can make it possible for them to stay.

3

**Are there hazards that are either entirely new or better known than they were when the area was first built in its current form?**

Things change. While plenty of details relating to the extent of human-caused climate change are a source of controversy, no legitimate climate scientists contend that climate was entirely stable in the past or will remain stable in the future. Likewise, data can improve over time. While no scientists can predict when an earthquake will take place, it is becoming easier to predict where they will strike. Changes in actual circumstances and knowledge can sometimes result in people being stuck in places that are now known to be dangerous but weren't known to be dangerous in the past. This can be a case for mitigation supports.

4

**Is the area being considered for mitigation support of particular historical, economic, or cultural significance?**

Sometimes an area can be worth mitigating, well, just because it is. The city of New Orleans, for example, has played an enormous role in the development of American music, food, and visual art and is the location of important historical events. Because large portions of it are located below sea-level in a hurricane-prone area, it's unlikely that much of the city could ever pay truly risk-based

flood and wind insurance rates unless public resources are invested in the city's levee system and in mitigating individual properties.

5

**Is the government subsidizing development in places where development should not happen or is harmful?**

Mitigation can also involve discouraging people from doing the wrong thing in the first place. Although private property owners, at the end of the day, should be able to do almost anything they want with their own land, the government should avoid encouraging construction in harmful places. For example, re-nourishing beaches that nature is trying to wash away may sometimes help preserve a few houses and, of course, the beaches themselves, but it is wasteful, promotes erosion and harms the environment. States should consider imitating the principles of the federal government's *Coastal Barrier Resources Act* (CBRA)—an important environmental law signed and supported by President Ronald Reagan. Under CBRA, the federal government stays away from environmentally sensitive barrier islands and barrier beaches. Federal programs to build roads, provide flood insurance, construct housing and do dozens of other things simply do not operate in these areas although private developers and landowners are free to do whatever they desire. States may want to consider taking this idea further and working to end all development subsidies in particularly disaster-prone areas.

## Final Thoughts

While these questions may help to clarify things for some policy-maker, none provide a complete answer. A millionaire's mansion probably shouldn't get a single public dollar for mitigation support even if it has some historic significance. A subsidy or distortion that only impacts well-off people probably shouldn't warrant any future property mitigation subsidies. In other words, when it comes to providing answers about allocated mitigation resources the answer is still, "it depends."



**ELI LEHRER** is an advisor to the ALEC's Commerce, Insurance and Economic Development Task Force and is President of R Street Institute.





# Burdensome Regulation of Energy and Manufacturing Industries Must End

BY CHARLES T. DREVNA

**A**t a time when our nation's policymakers should take every possible step to spur economic recovery, regulations on our nation's energy and manufacturing sectors continue to grow, resulting in increased fuel and product costs for consumers, limited job growth, and compromised national energy security. Anyone familiar with the numerous regulations imposed on fuel and petrochemical manufacturers by the Environmental Protection Agency can cite a litany of examples too long for most to bear or believe.

One egregious example of the regulatory excess is EPA's so-called Tier 3 rule targeting petroleum refineries. This rule could require an additional 67 percent reduction in sulfur levels in gasoline from already low levels. Since 2004, refiners have reduced the levels in gasoline by 90 percent. The result is very little sulfur being emitted from U.S. automobiles today and existing air quality research that shows no additional health or environmental benefits

to be gained from imposing new, tougher sulfur standards.

Another example is EPA requiring refiners to purchase \$6.78 million worth of "waiver credits" in 2011 for failing to blend six million gallons of cellulosic biofuel into gasoline and diesel, even though the government's own data shows that not a single gallon of cellulosic ethanol was produced for the commercial market. Unfortunately, reality is not stopping EPA from requiring businesses to pay for not using these phantom fuels.

The list of examples is long and extreme, but instead of dedicating an entire column to citing each and every one, I'd rather dedicate this space to clearly stating the true impact of the current administration's war on fossil fuels.

I'll begin with refineries in the Northeast, which are struggling to compete with their European and Asian counterparts and are some of the most recent victims of EPA's excessive regulations. Since Europe increasingly runs on diesel, the refineries there look to sell surplus gasoline in the United States. If American refineries face significantly higher regulatory costs, they'll lose out to their

European competitors. Asian refineries have also been built for the sole purpose of exporting fuel to the United States and other markets.

Faced with increased competition and regulatory costs, three refineries in the Northeast have had to make the decision to close late last year. This resulted in the loss of 34 percent of the Northeast's gasoline production. The burden of federal regulations on our energy industry has been a significant factor in the closure of 66 petroleum refineries in the United States over the past 20 years, according to a March 2011 Department of Energy report.

This added regulatory weight is not exclusive to businesses and manufacturers. Consumers are also feeling the impact of onerous and unnecessary federal energy regulations. For instance, Uncle Sam presently mandates that gasoline contain continuously increasing volumes of corn-based ethanol over the next decade and longer. Under the law, refiners have to blend 36 billion gallons of biofuels, mostly ethanol, into the fuel supply by 2022.

The increase in ethanol comes with many problems and very little benefit. Increased ethanol in our transportation fuels reduces efficiency and makes it more expensive to fill our cars, lawn mowers and small engine power tools. Ethanol production also creates more greenhouse gas emissions than its petroleum counterpart. In addition, the diversion of corn from food products into ethanol has caused corn and food prices to rise, putting greater financial stress on families that already have tight budgets and farmers who need to purchase feed to raise livestock.

Rather than properly labeling the ethanol debacle as a failed experiment, the federal government is looking to implement regulations that facilitate and encourage higher ethanol levels in gasoline. EPA recently approved the sale of fuel blends containing 15 percent ethanol in the general gasoline supply – up from present 10 percent levels.

Auto manufacturers are putting federal regulators on notice saying increased levels of ethanol in gasoline could potentially damage engines and void the warranties of hundreds of thousands of cars, trucks and SUVs. Owners of motorcycles, boats, farming equipment and small engine power tools could also bear the expense of faster engine wear.

Given the massive ethanol mandate and decreasing overall gasoline demand, refiners will have to continue to blend gasoline with even greater amounts of ethanol in the coming years. Ironically, the rationale behind blending ethanol into gasoline was to reduce consumer costs and encourage America's energy independence. Unfortunately, we are witnessing the opposite effect.

In order to promote a return to American economic prosperity, our government needs to establish a regulatory environment that ensures economic and environmental progress go hand-in-hand, and not continue to grow the web of onerous regulations, bureaucratic red tape, and conflicting rules that only serve to impede progress at every turn.

The opportunities to return to economic prosperity are great. Natural gas production through "hydraulic fracturing" offers new prosperity for America and is already demonstrating that a robust domestic energy industry can help revive state economies and put

people back to work. In Pennsylvania alone, shale gas exploration and drilling created more than 60,000 jobs by 2009, with more than 200,000 new jobs anticipated by 2015.

An ample supply of low-cost natural gas has been a game-changer for the steel and petrochemical industries. A PricewaterhouseCooper study confirms the promising nature of this manufacturing renaissance, suggesting that high shale recovery scenarios could lead to the development of an additional one million manufacturing jobs by 2025.

In its 60-year history, hydraulic fracturing has proven to be a safe, reliable source of energy production due to cooperation between state agencies and industry. Although the regulatory authority for natural gas drilling is reserved to the states, the federal government is finding its penchant to regulate irresistible, and has drafted stringent new rules on methane emissions at natural gas wells. Other proposals are anticipated that would provide needless and duplicative layers of compliance requirements. Left unchecked, federal agencies run the risk of increasing the cost of business and dampening job growth for little or no environmental benefit.

The good news is that the American people are becoming aware of the impact of heavy-handed regulations that slow economic growth and job creation. A recent national survey conducted by MWR Strategies showed increasing concern among Americans regarding regulations on our energy and manufacturing industry that provide little benefit. According to the survey results, more than half of the respondents (52 percent) strongly agree (and 77 percent overall agree) that the federal government needs to adopt a more reasonable approach to regulation. Even 58 percent of self-described moderates and 36 percent of self-described liberal voters think that federal regulation results in more costs than benefits.

Less than a third (28 percent) said that EPA properly balances the need for economic growth with the need for environmental protection all or most of the time; and just 7 percent said they always get it right. 69 percent of survey respondents said that the federal government should pursue tax and environmental policies that make refining easier.

If the energy manufacturing industry is to continue to grow our economy while providing high-paying jobs, Washington's appetite to regulate must be kept in check. State legislators have an important role to play in carrying that message to congressional lawmakers as they develop federal energy policies for the next generation. Federal officials should also understand that voters recognize the potential of America's energy resources, and failure to take advantage of such potential will carry political consequences.



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# Biotechnology: The Future in Agriculture Products

BY AB BASU

**T**he U.S. Census Bureau currently estimates the U.S. population at a little over 300 million and the world population at 7 billion. By 2050, the U.S. and world population levels are expected to reach 420 million and 9 billion respectively. Some experts have predicted that to feed such an increase in population in the next three decades, agricultural output will have to double. In the agricultural sector, newer technologies are critical for America to continue to feed a significantly increasing population.

Farmers have practiced the science of improving crops for thousands of years. Historically, this process could have taken many decades or even a century to improve a single crop. Biotechnology in agriculture has transformed the trial-and-error practice of improving a crop into a much more specific science, in which the improvements can be created in just a few years. In regards to safety and regulation, agricultural biotechnology-derived seeds have to undergo a rigorous and lengthy federal regulatory process in the United States before they are approved for use on the farm. USDA, FDA and EPA all have certain authorities governing the development and use of agricultural biotechnology.

Over the past 15 years of biotech crop production, farmers have benefited in key ways including increased yields and increased incomes, and environmental benefits such as reduced insecticide use and less runoff from farms into waterways.

About half of the global production of biotech crops is within the United States. For example, Biotech traits are used in the majority of U.S. corn, soy, canola, sugar beet and alfalfa production. According to a recent study by the globally respected firm PG Economics, farmers adopting biotechnology globally have seen a \$78.4 billion net economic increase over this time period. Additionally, the report stated that of the reported farm income benefit, 60 percent (\$46.8 billion) have been due to yield gains while the balance has been attributed to reductions in the costs of production. An interesting quote from this report tells us: "A majority (55 percent) of the 2010 farmer income gains went to farmers in developing countries, 90 percent of which are resource poor and small farms."

New research is focusing on less water use, which can have profound impacts in drought years and also in areas of the world where crops would not otherwise be feasible. Research also is involved in ways to improve nutritional qualities of food—again, with possible far reaching impact.

Even with all the proven benefits that these new technologies afford to farms and the public, there has been increased anti-technology activism against biotechnology. Europe, as a result of early

and passionate advocacy by the green movement, has for the most part severely restricted agricultural biotechnology.

In 2010 the European Union reviewed the previous few decades' worth of biotech risk-related research from 130 research projects and over 500 independent studies conducted during the last 25 years within its member countries and found "that biotechnology, and in particular GMOs, are not per se more risky than conventional plant breeding technologies. Another very important conclusion is that today's biotechnological research and applications are much more diverse than they were 25 years ago..." All those studies together reportedly amount to a total cost to the EU of \$425 million. Yet the unsupportive EU position on agricultural biotechnology remains.

Here in the United States, anti-biotechnology activism is alive and well, but not as stifling to agriculture as in Europe. During the first decade of biotechnology adoption, certain U.S. universities and farms saw destruction of research and crops by environmental extremists. There was even a bombing at Michigan State University by activists who thought they were targeting biotech research.

At the time, there was little recourse for smaller levels of destruction or vandalism other than suing for the value of the portion of crop or research destroyed. In response, some state governments in those parts of the country with high levels of agriculture and agricultural research passed legislation to provide deterrents to such destruction. A common element in the varied legislation was to increase penalties for the destroyers/vandals so that they are made to pay treble damages and, in some cases, even raising the infraction from misdemeanor to a felony level.

The agricultural biotechnology industry welcomes discussing new agricultural technologies with ALEC members and also exploring possible new ways to protect U.S. farmers and research. These technologies have and will continue to play an important role in America's global leadership in producing food, feed and fiber. It is imperative that policy and regulatory frameworks are adequate to protect the environment but also enable the industry to innovate and come up with solutions to meet the growing demand for agricultural products worldwide.



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# ECONOMY DERAILED

**STATE-BY-STATE IMPACTS OF THE EPA REGULATORY TRAIN WRECK**

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# Economy Derailed

## EPA's War on Affordable Energy

BY TODD WYNN

**T**he U.S. Environmental Protection Agency (EPA) has begun a war on affordable and reliable energy and, by proxy, the American standard of living. During the past couple of years, the agency has undertaken an expansive regulatory assault in which recent EPA activity could surpass its entire 40-year history.

Although a federal cap-and-trade program or renewable energy mandate are political non-starters, the EPA has become the go-to tool to drive renewable energy and climate change goals without the consent or vote of elected officials. Unfortunately, the states will pay the price of higher electricity rates and the ensuing economic damage.

nation, increasing electricity rates by 10.35 percent on average.

Eleven states could see rate increases of over 20 percent. The state of Iowa has the highest potential rate increase at 32 percent. Ranked according to potential job loss, the top ten states most impacted by the EPA are Illinois, West Virginia, Ohio, Alabama, Michigan, Indiana, Pennsylvania, Tennessee, Kentucky, and North Carolina—each of which could shed over 20,000 jobs. Illinois will be the worst hit with jobs at risk totaling 38,382.

The EPA and environmental advocacy groups cast a discouraging and alarmist image that environmental quality and health will continue to deteriorate if these regulations are not enforced. While this argument may create an emotionally driven response to justify additional regulations

in the atmosphere and in total emissions over the past few decades. The Air Quality Index, a metric used by EPA for declaring days on which the air is “unhealthy” for sensitive people (children, the elderly, and people with respiratory ailments) has declined nearly 63 percent in just 10 years (1999–2008), meaning that there are 63 percent fewer days that air quality is unhealthy for sensitive populations. These environmental quality improvements mean that the U.S. enjoys some of the cleanest air and water in the world, and U.S. citizens are living healthier, longer lives.

In addition to environmental quality improvement, one of the major reasons for higher life expectancies today than 100 years ago is access to affordable and reliable energy. Energy is the lifeblood of the economy, required by everything

A recently released American Legislative Exchange Council report called *Economy Derailed: State-by-State Impacts of the EPA Regulatory Train Wreck* highlights how the current administration seems hell-bent on making the President's promise of making electricity rates “necessarily skyrocket” a reality.

A recently released American Legislative Exchange Council report called *Economy Derailed: State-by-State Impacts of the EPA Regulatory Train Wreck* highlights how the current administration seems hell-bent on making the President's promise of making electricity rates “necessarily skyrocket” a reality. *Economy Derailed* reveals that recent EPA regulations will lead to the closure of over 130 power plants across the

on industry and businesses, the evidence shows a narrative much to the contrary of propaganda fostered by the EPA and others. Traditional pollutants have been on the decline for decades, and all continue to decline.

Mercury, carbon monoxide, ozone, lead, nitrogen dioxide, particulates, fine particulates, and sulfur dioxide emissions have all decreased both in ambient concentrations

Americans buy, consume, produce and transport. Affordable and reliable energy has made products cheaper to produce, manufacture and consume, leading to lower costs of living and the ability to divert household income into other desires than just energy costs.

This relationship also works in reverse. The continuing regulatory burden, which is increasing the cost of energy, will have

dangerous unintended consequences for the health and standard of living of Americans. The plight is greatest for American families in the most precarious economic circumstances. Nearly 50 percent of U.S. households earn less than \$50,000 per year, and these households spend more on energy than on food, spend twice as much on energy than on health care, and spend more on energy than on anything else except for housing. Increases in energy prices will mean that Americans have less money in their pockets to purchase health care, healthy food, exercise, shelter and many other essentials for a healthy and long life.

Despite significant environmental improvements during the past few decades and the growing economic costs of regulatory activity, the EPA continues to propose more stringent air and water regulations. The vast expansion of federal regulations is illustrated by the trend of the size of the Federal Register, the repository of federal regulations, from 2,620 pages in 1936 to over 80,000 in 2011. A short overview of only a few of the recent EPA regulations reveals that the country is being forced into an energy transition that is unprecedented in U.S. history.

The Mercury and Air Toxics rule impacts mainly coal-fired electricity generation, and it could force more than 15 gigawatts of electricity generation into early retirement—enough energy to power at least ten million U.S. households. Since the standards are so stringent and the compliance timelines are nearly impossible to meet, existing coal plants will have a tough time complying and no new coal plants are likely to be built.

The Boiler MACT rule hits most industrial and commercial boilers that burn gas, oil, coal and biomass. These boilers provide heat and electricity to factories, pulp and paper mills, and other facilities, and the regulation threatens to significantly increase the operating costs of these boilers. Although watered down slightly after significant pushback from industry and policymakers, the regulation would have risked nearly 800,000 jobs nationwide.

Although the court vacated the rule last

month, the Cross-State Air Pollution Rule would have threatened up to 7 gigawatts of mainly coal-fired electricity generation with early retirement, affecting reliability and affordability of electricity. The court found the EPA had overstepped its bounds when forcing federal implementation plans onto the states which is a violation of the cooperative federalism model set forth in the Clean Air Act. The EPA will have to replace the Cross State-Air Pollution Rule in the near future. Affected industries are unaware what form this new rule may take which causes significant problems for long term resource planning and investment decisions. EPA regulation of coal ash could lead to the shutdown of 250 to 350 coal electricity generating units and drive up the cost of electricity. Cooling water intake regulation could affect more than 1,000 coal, oil steam, and gas steam generating units and could threaten up to 41 gigawatts of electricity generation with early retirement.

The regulation that has received the lion's share of attention is the EPA's proposed regulation of greenhouse gases. In March, the EPA released a carbon dioxide standard for new power plants. The standard sets carbon dioxide emission rates so low that not a single new coal-fired power plant may ever be built in the U.S. The EPA notes that the standards would have to be met either by natural gas combined cycle generation or coal-fired generation using carbon capture and sequestration—the commercially unproven process of capturing and storing carbon dioxide. There are also plans in the works to extend this regulation to existing power plants which would essentially hit the entire fleet of coal-fired power plants.

Ironically, the EPA did not calculate the health benefits of its carbon dioxide standard because it is not harmful to life in the traditional sense of a pollutant. As EPA Administrator Lisa Jackson says, this regulation is to “move us into a new era of American energy,” a public policy prescription, not a concern for public health. In the regulatory impact analysis for the carbon dioxide standard, the EPA revealed its intent by stating: “This proposed rule is consistent with the President's goal to ensure that ‘by

2035 we will generate 80 percent of our electricity from a diverse set of clean energy sources...”

As traditional pollutants have been on the decline for decades, the Obama Administration's true purpose of the carbon dioxide standard and many of the recent EPA regulations becomes quite clear. It is to force affordable and reliable energy off of the electricity grid and allow for the achievement of the Administration's “clean” energy agenda.

A product of decades and decades of an expanding and over-reaching federal government, the EPA is a living illustration of the erosion of constitutionally limited government in the United States. It is an unelected body of regulators who retain the power to mandate the Administration's wish list of energy production, regardless of the will of the people or those elected to represent the people. Welcome to the era of regulation without representation.

For more information on how your state will be impacted by recent EPA regulations visit [www.regulatorytrainwreck.com](http://www.regulatorytrainwreck.com).

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# EPA Rules, Retirements and Reliability — Where Do States Fit In?

BY JOHN MCMANUS AND DANIEL SNIDER

**R**egulations adopted by the U.S. Environmental Protection Agency (EPA) in the past year will require unprecedented changes to the nation's electric infrastructure, including billions of dollars of mandatory investment for the owners of electricity generating units and the transmission facilities that connect them to the grid. Impacts from the EPA rules are greater because the short time frame for compliance creates threats to the reliability of the electric grid in certain areas and results in drastically increased costs to customers. But states can help mitigate those impacts, at least a little.

Many units across the nation are already equipped with the necessary controls to achieve the standards, or can be upgraded or alter operations (e.g., switching fuels) within the three-year compliance schedule so that the standards can be met. Other units will require additional time to complete construction of the necessary controls, often on sites where the necessary space to construct the controls is severely constrained. For many units, however, investments of the scale necessary to achieve compliance with these limits are impractical due to the age, condition, and economic potential of the units, leading to premature, simultaneous unit retirements on an unprecedented scale.

Impacts to the grid are difficult to assess, and the reliability organizations that perform detailed assessments do so only in response to official notifications of retirements from generation owners, or as part of their normally scheduled regional planning processes. Because such information is proprietary and has pricing impacts where competitive power markets are in place, not all generation owners have fully

revealed their compliance plans. Predictions for early retirements range from 10-30 percent of the country's existing coal fleet.

The states have a critical role to play in mitigating impacts to consumers and reliability risks as this Federally-mandated program is implemented. Existing EPA regulations give states the authority to grant a fourth year compliance extension, allowing generators within their jurisdictions to better manage access to skilled labor sources, raw material supplies and the capital needed to construct their projects. Such extensions will also be a critical tool in coordinating outages for units where additional controls are installed and assuring that retiring units remain active long enough to allow the necessary outages to occur without impairing the reliability of the electricity grid.

## HOW WE GOT TO THIS POINT

On Feb. 16, the EPA published a notice of final regulations under Section 112(d) of the Clean Air Act for electric generating units (EGUs). The regulations (commonly referred to as the Mercury and Air Toxics Standards or MATS) adopt stringent limits for particulate matter, hydrochloric acid and mercury on a 30-day rolling average basis for each unit, and became effective April 16. Compliance under this program is required within three years, or by April 16, 2015, unless extensions are granted.

The MATS rule applies to every coal and oil-fired unit in the country, and will require in one form or another either retirement, a pollution control equipment upgrade or new retrofit, a fuel switch or an operational change at almost every one of those units. The regional transmission organization (RTO) for much of the Mid-Atlantic and part of the Midwest, PJM Interconnection, LLC, has confirmed that since December 2011, 14,000 MWs of capacity have

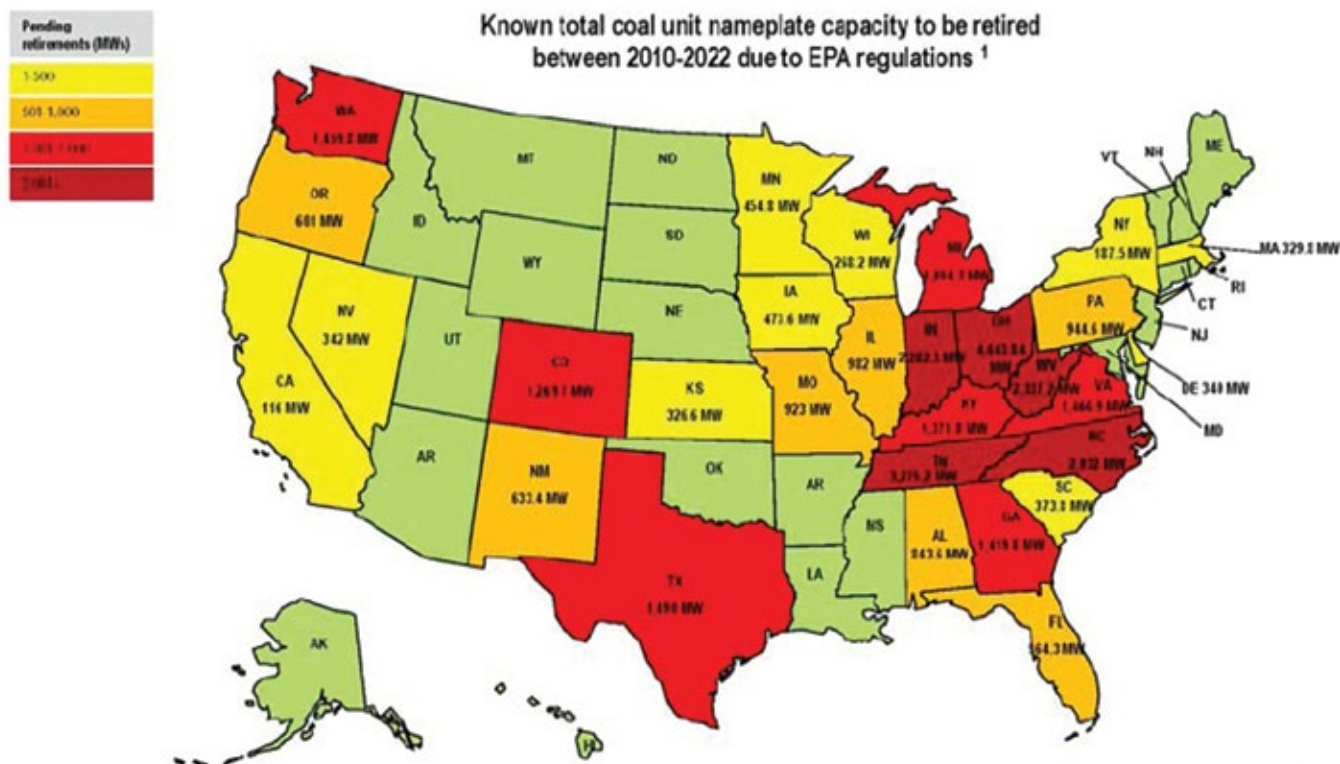
announced plans to retire prior to June 2015. All of these retirements are related to the MATS rules. As shown below, the impacts are not uniform, and many states in the Midwest and South Central regions will be particularly hard hit.

Although the EPA, and even some of the RTOs, have indicated that their analyses show that available capacity will be sufficient to meet customer demands heading into the 2015 delivery year, these statements do not provide a full description of the local reliability issues that may impact customers from now until 2015 and beyond.

Local reliability issues arise when a small area known as a load pocket cannot receive an adequate amount of capacity, energy, voltage regulation, and other ancillary services to assure the stability of the electric grid under a reasonable range of operating conditions. An example of a load pocket would be a major city such as Cleveland, Ohio, with inadequate transmission capacity coming into the city and inadequate local generation resources. Reliability is jeopardized and energy prices escalate in load pockets.

In the past, the planning authorities (RTOs, the North American Electric Reliability Corp., utilities, state agencies, etc.) have been able to adjust their long term construction plans for both generation and transmission to meet local deliverability criteria (generally one outage in 10 years, using probability statistics). However, with the short timeframe for compliance with the MATS rules, there is a greater exposure to outages or other service issues in the local load areas due to transmission deliverability issues, especially with the high numbers of local units likely to be out of service for maintenance and retrofit activity between now and 2015. So even if the overall reserve margins in the RTOs appear to be adequate, this does not mean that the available capacity can be delivered to all the local load pockets within the footprint.

Multiple logistical issues must be addressed in order to maintain reliability while all the retrofit activity is taking place. The RTOs plan to address several of the potential reliability issues through transmission additions and enhancements.



These transmission projects will assure that sufficient transmission capacity is available to deliver reliable power from the remaining generating units, and if they are not completed in a timely manner, local reliability could be at risk.

Generation owners who plan to make retrofits to existing units will need to secure skilled labor and materials well before April 2015 to have the units in compliance by that date. This becomes challenging when multiple generation owners compete for the same labor pool, engineering services, heavy construction equipment, and materials.

Further exacerbating the situation is the timing of the MATS rules in relation to the forward capacity commitments in many of the RTOs. Specifically, in PJM and MISO, the forward capacity commitments from existing units remain in place until June 1, 2015. This is 45 days beyond the compliance deadline for the MATS rules. Failure to satisfy these contractual obligations exposes the generation owners to financial penalties.

## ASSISTANCE FROM THE STATE ENVIRONMENTAL AGENCIES

The individual state environmental agencies can help address the need to assure reliability, coordinate construction outages, and manage customer cost impacts.

Specifically, the MATS rule allows for a fourth-year extension to be granted by the individual state permitting authorities. It is too early to predict whether, where, or when all the timing and construction issues described in this article will create local reliability risks.

It will be extremely beneficial for state officials to understand the nature of the risks created by the EPA rule deadlines, as well as the financial and reliability implications of retiring units prior to fulfilling their capacity obligations in the RTO marketplace. PJM has been particularly proactive in reaching out to state agencies and providing background information on their market structure and reliability planning and assessments. And they have found the state personnel to be genuinely interested

in the issues, and willing to issue a fourth year extension under appropriate circumstances with adequate supporting information from the generation owners.

Whether by agency pro-active efforts or by legislative resolution guiding agencies to investigate the need for fourth-year extensions among their generators, the states will play a key role in determining how onerous the MATS impacts will be for our economy and our consumers.



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# Free-Market Groups Take on Chemical Policy

BY ANGELA LOGOMASINI

**B**olstered by the efforts of environmental activists, news media regularly pump out stories on the allegedly dire health risks associated with man-made chemicals. We are told that chemicals in our food, water, and air may give us cancer, disrupt reproductive development, and maybe even make us fat.

Yet man-made chemicals have achieved many great public health benefits of which environmental activists seem oblivious. And the environmental health risks of these products are actually very low.

For example, addition of chlorine—a main target of activists—to water supplies has saved millions of lives. Since local engineers and industry introduced chlorination in the 1880s, waterborne-related deaths in the United States dropped from 75 to 100 deaths per 100,000 people to fewer than 0.1 deaths per 100,000 annually in 1950.

Nearly 85 percent of pharmaceuticals currently in use require chlorine to be used in their production. And thanks to chemicals used for pharmaceuticals, combination drug therapy reduced AIDS deaths by more than 70 percent from 1994 to 1997. Researchers estimated that AIDS drug treatments have saved a total of 3 million years of life in the United States since 1989. From 1999 to 2008, death rates continued to drop by 5 percent per year, according to the Centers for Disease Control and Prevention.

Chemicals called phthalates (there are several kinds of phthalates) are used in polyvinyl chloride (PVC)—a type of vinyl used for medical tubing, blood bags, and numerous other products. Although environmentalists have tried to ban these products, vinyl medical devices provide numerous lifesaving benefits. PVC is a safe,

durable, sterile product that can withstand heat and pressure, as well as produce tubing that doesn't kink. It is particularly beneficial for vinyl blood bags because it stores blood twice as long as the next best alternative and doesn't break as glass alternatives do.

Still, environmentalists often call for regulation on specious grounds. Consider their claims that that man-made chemicals used in consumer products pose a serious cancer risk. Yet in their landmark 1981 study of the issue, renowned scientists Sir Richard Doll and Richard Peto outline the widely understood and accepted causes of cancer in the United States. According to Doll and Peto, all pollution—including exposure to chemicals via consumer products—accounts for only 2 percent of all cancer cases. Tobacco use accounts for about 30 percent of all annual cancer deaths. Dietary choices account for 35 percent of annual cancer deaths.

Bruce Ames and Lois Swirsky Gold have come to similar conclusions, noting that smoking causes about a third of all cancers. They underscore the importance of diet by pointing out that the quarter of the population eating the fewest fruits and vegetables had double the cancer incidence than those eating the most. Finally, they conclude: "There is no convincing evidence that synthetic chemical pollutants are important as a cause of human cancer."

Although many lawmakers recognize these green falsehoods—they still need to address the anti-chemical hype for an understandably concerned electorate. In the past, this task has proven difficult as there are few places to access more balanced information. That is why the Competitive Enterprise Institute developed SafeChemicalpolicy.org—a collaborative effort of non-profit, free-market groups to bring together some of the best information on these issues and make it easily accessible.

The site opens a portal to chemical risk information for its non-profit members. It offers the public an alternative to a growing web of environmental activist sites that use misinformation and scare tactics to advance chemical regulation. Sites like SaferChemicals.org, NotAGuineaPig.org and the "Skin-Deep database" (demonizing personal care products) don't offer consumers useful information. They inspire political action by instilling fear based on unfounded claims and largely meaningless data.

SafeChemicalPolicy.org offers an alternative to fear mongering and mindless government bans. It includes fact sheets on key topics that provide easy-to-read yet substantive overviews of key chemical issues, a newsfeed available by RSS and email, research papers, and more. In addition to traditional media outreach, the site is also being marketed through social media. [Follow SafeChemicalPolicy.org on twitter (@chemicalpolicy) and give it the thumbs up on Facebook.]

SafeChemicalPolicy.org offers consumers a balanced, science-based understanding of these issues, revealing why we don't need to fear modern chemical technologies. In fact, we should fear the campaigns to ban, regulate, or otherwise deprive consumers of the benefits associated with the modern technologies that clean our water, help produce and preserve our food, sanitize our hospitals, make our medicines, and reduce risks associated with dangerous pests.



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# Women's Democracy Network Legislative Exchange Is a Study in Hands-On Democracy

BY MICHELLE BEKKERING

Each year the International Republican Institute's (IRI's) Women's Democracy Network (WDN) hosts a group of its most active network members for a conference in recognition of International Women's Day. This year's conference brought together WDN members who are elected officials and party leaders from 10 countries to explore America's local, state and federal systems of government.

Prior to the federal government study tour in Washington, D.C., the visit to the United States began in Charleston, West Virginia, where the delegation was welcomed at a dinner hosted in their honor at the Governor's Mansion by First Lady Joanne Jaeger Tomblin and co-hosted by House of Delegate's member Meshea Poore and the West Virginia Women's Commission. On behalf of herself and Governor Tomblin, the First Lady said, "We welcome you to West Virginia and thank you for your service as leaders in your communities around the world."

The first part of the conference focused on local government structures in the United States. The delegation was welcomed to City Hall by Charleston Mayor Danny Jones, Assistant Mayor Rod Blackstone and City Council Member-at-Large Mary Jean Davis. Commenting on the fundamental relationship between local government and the public, Mayor Jones said, "At this level of government we work more closely with the people, which allows us to provide direct services."

During meetings at City Hall, participants were given a comprehensive understanding of the responsibilities of a local governing body. Assistant Mayor Blackstone and Councilor Davis further emphasized of the importance of transparency and public access to elected officials. "My constituents know that they are always welcome to talk to me directly about issues that matter to them," said Councilor Davis.

The delegation also heard from Peter Gallo, Charleston's Information and Security Director, who talked about the city's public outreach services and how publically-funded projects are implemented.

Conference participants were particularly interested in transparency of expenditures and taxation. “Where do state and local taxes divide and how does this affect the efficiency of public services?” asked Elizabeth Ativie, a legislator from Nigeria. In response, Finance Director Joseph Estep gave an overview of budgeting, taxation and revenue spending at the city level and provided specific examples of the divergence between city and state taxes.

reiterated the spirit of the resolution, formally greeting the WDN delegation on the Chamber Floor following their introductions.

The legislative exchange was hosted by the Women’s Caucus of West Virginia’s bicameral state legislature. As House Delegate Meshea Poore explained to the delegation, “Even though we may be thousands of miles away, we deal with the same struggles, and we are here to support you, and your work in your respective countries. Know that you can always count on us.”

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To better understand the inner workings of state government, the delegation was delighted by the opportunity to participate in a one-on-one legislative exchange with women members of the West Virginia House of Delegates and Senate.

WDN’s delegation found the experience invaluable. “As elected officials ourselves, it was a great opportunity to see the procedures of drafting a bill and the decision-making processes of committees,” said Reem Badran, a member of parliament from Jordan and ALEC’s newest International Legislator Member.

Participants joined their partnered delegate for a full-day of legislative activities including attending committee hearings, participating in constituent meetings and visiting delegate offices. “I had the chance to observe Del. Charlene Marshall in constituent meetings and during a finance committee; we had many discussions about our legislative systems and made comparisons,” said Jalila Morsli, a member of parliament from Morocco. “The exchange allowed me to see, from a very close angle, how an American peer was doing her legislative work.”

Joining their delegate on the Chamber floor, the women observed voting on House resolutions and floor procedures. Elizabeth Ativie, state legislator from Nigeria, was particularly enthused by the West Virginia state legislature’s page program, “We do not have such things in Nigeria. What a great way to inspire interest in government within the next generation!”

The WDN delegation was officially honored by the House of Delegates through the pronouncement of a House resolution acknowledging International Women’s Day and the WDN delegation. Speaker of the House of Delegates Richard Thompson

Participants of the 2012 International Women’s Day delegation were: Sabina Cudic, member of the Naša stranka Political Advisory Council from Bosnia and Herzegovina; Lena Maryana Mukti, former member of parliament and ranking leader of the United Development Party from Indonesia; Reem Badran, member of parliament from Jordan and ALEC International Legislator Member; Tanja Tomic, member of parliament from Macedonia; Maria Antonieta Perez Reyes, member of congress from Mexico; Batchimeg Miggendorj, National Security Advisor to the President of Mongolia; Jalila Morsli, member of parliament from Morocco; Margriet Keijzer, member of the board of directors of the Christian Democratic Appeal Party from the Netherlands; Elizabeth Ativie, member of the Edo State House Assembly from Nigeria; and Perry Aritua, executive director of the WDN Uganda Country Chapter.



**MICHELLE BEKKERING** is the Director for the Women’s Democracy Network (WDN) where she oversees the International Republican Institute’s (IRI) global initiative to empower women for greater participation in their country’s public life. WDN is active in 55 countries worldwide. Before joining IRI, Bekkering served in the European and Eurasian Affairs Directorate of the National Security Council led by Dr. Condoleezza Rice and worked on Capitol Hill as an aide to Congressman Dana Rohrabacher (CA-46).



# The EPA Attempts to Erect a New Trade Barrier

BY REP. DAVE FRIZZELL



Asian biofuels have taken the global market by storm in recent years. Consumers are attracted to the high quality of the product and enjoy the competitive prices. But Western governments, including the United States, are starting to put up barriers in an effort to block the trade of Asian biofuels. The region's major producer countries, including Malaysia and Indonesia, should not let the trade barriers go unchallenged.

The global liberalization of trade has been a great boon for mankind. For the last few generations, developed country customers have enjoyed a wide variety of excellent goods and services at lower cost. And developing countries have successfully tapped into global export markets to fuel their economic rise.

The global trade in biomass-derived fuels has jumped in recent years. Asian producers have been able to enter new markets by offering consumers the most efficient biofuel. This growing trade has enabled countries to diversify their energy supply and has kept energy price inflation in check.

The United States is a major producer of biofuels, mostly derived from soya and corn. Despite lots of domestic supply, palm oil from Malaysia has been able to crack the American market. For example, Hawaii has tested the use of palm oil for power generation and investor interest in palm biodiesel has been rising.

American energy consumers enjoy having another option to round out their choices. It helps them ensure maximum flexibility when satisfying their electric generation and transportation needs.

But earlier this year the United States Environmental Protection Agency moved to block the use of tropical palm oil in the American market. The EPA has been pressured by special interest groups to erect a non-tariff barrier designed to penalize palm oil from countries like Malaysia.

The EPA claims that palm oil is more environmentally harmful than America's domestic supply, but the facts do not support this claim. Palm oil requires a much smaller agricultural footprint than America's domestic producers in order to generate the same amount of biofuel. When it comes to energy density—the most important determinant of energy efficiency and thus sustainability—palm oil has no equal.

Here's what's really happening. For many decades, American agriculture producers were protected from foreign competition. A system of subsidies, quotas, tariffs and other market distortions meant foreign agriculture producers had a hard time competing in the American market.

But the free trade winds that opened up markets for autos, steel, retailing and other sectors eventually started to blow across the agriculture sector. Over the last decade, much progress has been made in liberalizing the American market for agriculture products.

This has been great news for foreign agriculture producers hoping to break into the lucrative American market. And it has been a great blessing for American consumers as well.

But the American farming lobby has come up with clever new ways to protect their industry. While explicit tariffs and other egregious protectionist measures were being removed, they developed new strategies to keep out foreign competition.

One strategy has been to get environmental regulators to do their bidding. So working with green groups, the farming interests have been able to persuade the EPA to establish a protectionist measure in order to stifle competition.

Asian producers should not take this action sitting down. They should establish a dialogue with their allies in Washington to see if there is a way to get the EPA to reconsider.

If not, they should take their case directly to the World Trade Organization. The WTO's mission is to guarantee the free exchange of goods and services, unencumbered by political manipulation. It exists in part to push back hard against gimmicks such as this green protectionism. And there can be no higher calling for the WTO than to support the ability of the developing world to prosper and become food secure.

The fight for free trade and open markets has been long and not always easy. But it has helped lift billions of people out of poverty and stands as one of the great achievements of mankind.

The campaign today against palm oil is another battle in the wider conflict that aims to put consumer interests and economic growth ahead of narrow special interests. Asian palm oil producers should defend their rights in the global trading arena. American consumers will thank them for their effort and resolve.



**REPRESENTATIVE DAVE FRIZZELL** of Indiana has represented that state's 93rd District in the Indiana House of Representatives since 1992 and serves as ALEC's National Chair.

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